

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

v.

Criminal No. 2:03cr11

MATTHEW BERKSHIRE,

Defendant.

ORDER/OPINION

On the 26TH day of October, 2006, came the defendant, Matthew Berkshire, in person and by his counsel, Jennifer McGinley, and also came the United States by its Assistant United States Attorney, Shawn A. Morgan, pursuant to a Petition for Warrant or Summons for Offender Under Supervision filed in this case on September 21, 2006, and an Amended Petition filed on October 26, 2006, alleging Defendant violated conditions of his supervised release as follows:

1. Violation of Mandatory Condition that he refrain from any unlawful use of a controlled substance. On or about September 7, 2006, the defendant submitted a urine specimen for testing. This test was returned positive for cocaine from Scientific Testing Laboratories on September 14, 2005.
2. Violation of Special Condition that he participate in a program of testing, counseling and treatment for the use of alcohol and/or drugs as directed by the Probation Officer. The defendant failed to report for drug testing on February 7, March 16, May 17 and 30, June 16 and 29, July 20, August 10 and 25, and October 18, 2006.
3. Violation of Standard Condition that he report to the Probation Officer and submit a truthful and complete written report within the first five days of each month. The defendant has failed to submit written reports for the months of August and September, 2006.
4. Violation of Standard Condition: the defendant shall notify the Probation Officer at least ten days prior to any change in residence or employment. The defendant moved from his reported residence of 139 Peninsula Boulevard, Morgantown, West Virginia, on or about September 28, 2006, and failed to provide the Probation Officer with a new address.

Defendant's Probation Officer noted a previous Non-Compliance Summary had been filed on March 22, 2006, alleging that Defendant submitted a urine specimen on February 24, 2006,

which tested positive for cocaine.

Prior to the taking of evidence, Defendant waived the preliminary hearing and conceded probable cause existed to forward this revocation matter to United States District Judge Robert E. Maxwell for hearing and disposition.

The Court then explained the charges contained in the Petition and the effect of the proposed waiver to Defendant and inquired of him as to the voluntariness of his decision to waive the preliminary hearing. From the colloquy between the Court and the defendant, the Court concluded Defendant's decision to waive the preliminary hearing was knowingly and voluntarily made.

Upon consideration of all which, the Court finds there is probable cause to believe that the defendant violated the conditions of his supervised release as alleged in the Petition for Warrant or Summons for Offender Under Supervision filed September 21, 2006, and the Amended Petition filed October 26, 2006.

It is therefore **ORDERED** that the defendant be bound over for a full hearing before the Honorable Robert E. Maxwell, United States District Judge for the Northern District of West Virginia on the violation alleged in the Petition for Warrant or Summons for Offender Under Supervision filed September 21, 2006, and Amended Petition filed October 26, 2006.

It is further **ORDERED** that Defendant be remanded to the custody of the United States Marshal pending further proceedings in this matter.

The clerk of the court is directed to send a copy of this order to counsel of record.

DATED: October 26, 2006

/s/ *John S. Kaul*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE